

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEREMY JOHN HALGAT, and
individual Plaintiff,
v.
UNITED STATES OF AMERICA, Defendant.

Case No. 2:22-cv-00592-ART-EJY
Order Granting Motion to Dismiss
(ECF No. 71)

Plaintiff, Jeremy John Halgat, brings this action against the United States of America under the Federal Tort Claims Act (FTCA) for alleged misconduct occurring during his prosecution. Plaintiff brings the following causes of action: 1) violation of the Due Process Clause of the Fifth Amendment; 2) intentional infliction of emotional distress (IIED); 3) malicious and vindictive prosecution; 4) abuse of process; and 5) negligence. Before the Court is Defendant's Motion to Dismiss (ECF No. 71.)

I. BACKGROUND

Plaintiff alleges the following. On September 23, 2011, a shooting occurred at the Nugget Casino in Sparks, Nevada after an altercation between alleged Vagos MC members and the Hells Angels Motorcycle Club, which resulted in the death of Hells Angels Motorcycle Club member Jethro Pettigrew. (ECF No. 69 at ¶ 16.) On November 15, 2011, Gary Rudnick was arrested and charged with First Degree Murder with Use of a Deadly Weapon for his involvement in the September 23, 2011, incident at the Nugget Casino. (*Id.* at ¶ 18.) On January 5, 2012, Rudnick told investigators that Vagos MC international leadership ordered the killing of Pettigrew. (*Id.* at ¶ 19.) On March 16, 2012, Scott Rivera, an alleged member of the Vagos MC, told investigators that he was not aware of any prior

1 plans to kill Pettigrew. (*Id.* at ¶ 21.) On July 22, 2013, Ernesto Gonzalez, an
 2 alleged Vagos MC member, was tried for Pettigrew’s murder, and Rudnick
 3 allegedly provided a different account of who was at the meeting where the hit
 4 was ordered from what he had told investigators. (*Id.* at ¶ 23.) Another Vagos MC
 5 member, Jefferson Martin, told investigators that there was no plan to murder
 6 Pettigrew. (*Id.* at ¶¶ 27-28.) On December 31, 2015, the Nevada Supreme Court
 7 reversed Gonzalez’s conviction and stated that Rudnick’s testimony was
 8 uncorroborated by other witnesses or evidence. (*Id.* at ¶ 30.)

9 Various government witnesses allegedly changed their testimony about
 10 whether there was a hit on Pettigrew. David Karpel, who at the time was a U.S.
 11 Department of Justice Trial Attorney with the Organized Crime and Gang Section,
 12 met with Rudnick on February 10, 2016, to discuss who attended the alleged
 13 meeting. (*Id.* at ¶ 31.) On March 17, 2016, Rudnick allegedly told Gonzalez’s
 14 investigator, April Higuera, that there was no conspiracy to murder Pettigrew and
 15 that it was just a bar fight that went bad. (*Id.* at ¶ 32.) On March 5, 2017, after
 16 meeting with Karpel and joint task force officers, Martin alleged a conspiracy
 17 existed but changed the names of the individuals at the meeting. (*Id.* at ¶ 38.) On
 18 March 14, 2017, Rivera stated that there was a “green light” to kill any Hells
 19 Angels members and that there was also a side meeting after he met with Karpel
 20 and joint task force members. (*Id.* at ¶ 39.) On March 18, 2017, Karpel was
 21 informed that Rudnick had told different stories and recanted. (*Id.* at ¶ 40.) Karpel
 22 had Rudnick, Rivera, and Martin testify before a grand jury where Karpel
 23 allegedly prompted them to answer that certain members had been at the meeting
 24 where a hit on Pettigrew was ordered. (*Id.* at ¶ 42.)

25 Plaintiff, along with twenty-two co-defendants, were indicted for violating the
 26 Racketeer Influenced and Corrupt Organizations Act (RICO). (*Id.* at ¶ 10.) Plaintiff
 27 alleges that Karpel “was directly responsible for bringing and signing the RICO
 28 Indictment[.]” (*Id.*) He also allegedly met with government witnesses Gary

1 Rudnick, Jefferson, and Martin, and Scott Rivera prior to them testifying before
 2 the grand jury on June 7, 2017. (*Id.* at ¶ 11.) The government allegedly knowingly
 3 elicited false testimony to secure the indictment. (*Id.* at ¶ 12.) Allegedly, Martin
 4 had told the government he felt pressure from Karpel to lie to law enforcement.
 5 (*Id.* at ¶¶ 49, 57.) The government was also able to secure the indictment based
 6 on evidence obtained through an undercover sting operation (Operation Pure
 7 Luck) that included agents Arboreen, Brancato, and Wear. (*Id.* at ¶ 14.)

8 On June 16, 2017, Plaintiff was arrested in Las Vegas, Nevada. (*Id.* at ¶ 46.)
 9 He was released on a personal recognizance bond on June 19, 2017, and was
 10 required to wear a GPS monitor until his case was fully dismissed on June 12,
 11 2020. (*Id.*) On February 24, 2020, a jury acquitted all defendants in Trial Group
 12 1 of the RICO indictment, which did not include Halgat. (*Id.* at ¶ 59.) On March
 13 16, 2020, co-defendant Jeffrey Voll's defense attorney filed a Motion to Dismiss
 14 the Superseding Indictment, and in response the government dismissed Count 1
 15 against Halgat and other co-defendants. (*Id.* at ¶ 60.) On April 8, 2020, Judge
 16 Gloria M. Navarro signed an order dismissing Count 1 in the superseding
 17 indictment, and on June 12, 2020, she signed an order dismissing the remaining
 18 counts against Halgat. (*Id.* at ¶ 62.) On April 7, 2022, Plaintiff filed the present
 19 action. (ECF No. 1.) On August 16, 2022, Plaintiff voluntarily dismissed the
 20 Washoe County Sheriffs Department. (ECF No. 22.) On August 20, 2022, Plaintiff
 21 voluntarily dismissed the Los Angeles County Sheriffs Department. (ECF No. 26.)
 22 On March 22, 2023, Plaintiff voluntarily dismissed Karpel, Arboreen, Brancato,
 23 and Wear. (ECF No. 59.)

24 **II. LEGAL STANDARD**

25 A court must dismiss a complaint if it fails to state a claim upon which relief
 26 can be granted. FED. R. CIV. P. 12(b)(6). “To survive a motion to dismiss, a
 27 complaint must contain sufficient factual material, accepted as true, to ‘state a
 28 claim to relief on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (quoting *Bell*

1 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
 2 plausibility when the plaintiff pleads factual content that allows the court to draw
 3 the reasonable inference that the defendant is liable for the misconduct alleged.”
 4 *Id.* at 663 (citing *Twombly*, 550 U.S. at 556).

5 At the pleading stage, *Twombly* and *Iqbal* “calls for enough fact[s] to raise a
 6 reasonable expectation that discovery will reveal evidence of [the claim].”
 7 *Twombly*. 550 U.S. at 556. Under *Twombly* and *Iqbal*, “[a] court considering a
 8 motion to dismiss can choose to begin by identifying pleadings that, because they
 9 are no more than conclusions, are not entitled to the assumption of truth.” *Iqbal*,
 10 556 U.S. at 664. Then, the court should assume the veracity of well-pleaded
 11 factual allegations “and then determine whether they plausibly give rise to an
 12 entitlement to relief.” *Id.*

13 **III. DISCUSSION**

14 A. Fifth Amendment Due Process Clause Claim

15 As an initial matter, Plaintiff concedes that he cannot bring his Fifth
 16 Amendment Due Process Clause claim. (ECF No. 83 at 11.) Thus, the Court will
 17 dismiss this claim.

18 B. Sovereign Immunity

19 Sovereign immunity shields the government from lawsuits unless it has
 20 consented. “It is axiomatic that the United States may not be sued without its
 21 consent and that the existence of consent is a prerequisite for jurisdiction.” *United*
 22 *States v. Mitchell*, 463 U.S. 206, 212 (1983). Such consent must be “unequivocally
 23 expressed in the text of a relevant statute.” *Donovan v. Vance*, 70 F.4th 1167,
 24 1172 (9th Cir. 2023) (citations omitted). “Under 28 U.S.C. § 2680(h), the United
 25 States is not liable for ‘[a]ny claim arising out of...malicious prosecution, abuse
 26 of process,’ and certain other intentional torts, unless committed by
 27 “investigative or law enforcement officers of the United States Government.””
 28 *Manansingh v. United States*, No. 21-16192, 2023 WL 7295184, at *2 (9th Cir.

1 Nov. 6, 2023). However, the exception does not apply to prosecutors. *Id.* (defining
 2 “investigative or law enforcement officer” as “any officer of the United States who
 3 is empowered by law to execute searches, to seize evidence, or to make arrests
 4 for violations of Federal law”); *see also Manansingh v. United States*, No. 21-
 5 16192, 2023 WL 7295184, at *2 (9th Cir. Mar. 28, 2023) (“Federal prosecutors
 6 do not qualify as ‘investigative or law enforcement officers.’”); *Wright v. United
 7 States*, 719 F.2d 1032, 1034 (9th Cir. 1983), *abrogated on other grounds as
 8 recognized by Gasho v. United States*, 39 F.3d 1420 (9th Cir. 1994) (finding that
 9 a malicious prosecution claim concerning conduct by federal officials could only
 10 proceed against an IRS agent but not a prosecutor because only the IRS agent
 11 was an investigative or law enforcement officer).

12 Sovereign immunity shields the United States from this lawsuit. While
 13 Plaintiff discusses multiple federal actors in his amended complaint, his
 14 malicious prosecution and abuse of process claims are solely based on the
 15 conduct of Karpel, who at the time was a U.S. Department of Justice Trial
 16 Attorney with the Organized Crime and Gang Section. (ECF No. 69 at ¶ 26.) In
 17 the section of the complaint discussing the malicious prosecution cause of action,
 18 Plaintiff alleges that Karpel, along with Officer Arboreen, ATF Task Force Officer
 19 Brancato, and agent Wear presented recanted testimony and material
 20 representations to the Grand Juries to secure the indictments against Plaintiff
 21 and his co-defendants (*Id.* at ¶ 90) but fails to explain how Arboreen, Brancato,
 22 and Wear played any role in choosing whom to indict or what evidence to present
 23 to the grand jury, both decisions normally made by the prosecutor. Similarly,
 24 Plaintiff mentions Arboreen, Brancato, and Wear when pleading abuse of process
 25 (*Id.* at ¶ 99), but the main allegations concern Karpel allegedly using fabricated
 26 evidence, recanted testimony, lies, and materially misleading statements to
 27 secure the indictments. (*Id.* at ¶ 100.) Because the United States has not
 28 consented to suit based on prosecutorial conduct, Plaintiff cannot bring his

1 malicious prosecution or abuse of process claims.

2 Plaintiff also cannot bring his remaining claims for IIED and negligence
 3 because these claims are based on the same conduct allegedly constituting abuse
 4 of process and malicious prosecution. A court should look beyond labels when
 5 determining whether the intentional tort exception applies to a claim. *Thomas-*
 6 *Lazear v. Fed. Bureau of Investigation*, 851 F.2d 1202, 1207 (9th Cir. 1988). The
 7 court should focus its inquiry “on whether conduct that constitutes an
 8 enumerated tort is ‘essential’ to a plaintiff’s claim.” *Sabow v. United States*, 93
 9 F.3d 1445, 1456 (9th Cir. 1996) (internal citations omitted).

10 Here, Plaintiff’s IIED alleges that Defendant is liable for IIED because
 11 Karpel, Arboreen, Brancato, and Wear committed “extreme and outrageous acts
 12 with the intent to indict Plaintiff and his co-defendants and inflict severe mental
 13 and emotional distress upon Plaintiff and his co-defendants.” (ECF No. 69 at ¶
 14 83.) While Plaintiff names other parties, this claim clearly derives solely from
 15 Karpel’s alleged conduct forming the basis of his malicious prosecution claim,
 16 specifically his actions to indict Plaintiff and his co-defendants. See *Imbler v.*
 17 *Pachtman*, 424 U.S. 409, 431 n.33 (1976) (explaining that prosecutors must
 18 decide “questions of whether to present a case to a grand jury, whether to file an
 19 information, whether and when to prosecute, whether to dismiss an indictment
 20 against particular defendants, which witnesses to call, and what other evidence
 21 to present.”). Thus, the claim is barred because it is based on prosecutorial
 22 activity and relies on the malicious prosecution claim.

23 Plaintiff’s negligence claim is also barred. Plaintiff alleges that Karpel,
 24 Arboreen, Brancato, and Wear violated their “duty of care to avoid causing
 25 unnecessary distress to persons through their making of arrests, indictments,
 26 and prosecution.” (ECF No. 69 at ¶ 107.) Plaintiff claims that they relied on
 27 fabricated evidence, recanted testimony, and material representations to indict
 28 Plaintiff and “commenc[e] an illegal and malicious prosecution of Plaintiff.” (*Id.*)

1 Thus, the malicious prosecution and abuse of process claims are essential to the
 2 negligence claim, and the negligence claim is based on prosecutorial conduct. As
 3 such, the Court will dismiss this claim.

4 **C. Discretionary Function Exception**

5 Plaintiff's claims are also barred by the discretionary function exception.
 6 The discretionary function exception bars “[a]ny claim...based upon the exercise
 7 or performance or the failure to exercise or perform a discretionary function or
 8 duty on the part of a federal agency or an employee of the Government, whether
 9 or not the discretion involved be abused.” 28 U.S.C. § 2680(a). In determining
 10 whether the discretionary function exception applies, courts first “ask whether
 11 the challenged action involves ‘an element of judgment or choice.’” *Sabow*, 93
 12 F.3d at 1451 (quoting *United States v. Gaubert*, 499 U.S. 315, 322 (1991)). “If the
 13 challenged actions involve an element of choice or judgment, [the court] must
 14 determine ‘whether that judgment is one of the kind that the discretionary
 15 function was designed to shield.’” *Id.* (quoting *Gaubert*, 499 U.S. at 322-23). The
 16 conduct must have a legitimate policy rationale. *Id.* at 1454. “While the burden
 17 of proving the *Gaubert* factors ultimately falls on the sovereign entity asserting
 18 the discretionary function exception, ‘a plaintiff must advance a claim that is
 19 facially outside the discretionary function exception in order to survive a motion
 20 to dismiss.’” *Doe v. Holy See*, 557 F.3d 1066, 1084 (9th Cir. 2009) (quoting
 21 *Prescott v. United States*, 973 F.2d 696, 702 & n.4 (9th Cir. 1992)).

22 The discretionary function exception applies to Plaintiff's claims. Because
 23 all of Plaintiff's claims are related to the decision to prosecute Plaintiff, they
 24 involved “an element of choice or judgment...that the discretionary function was
 25 designed to shield.” *See Wright*, 719 F.2d at 1035 (citing *Smith v. United States*,
 26 375 F.2d 243 (5th Cir. 1967), *cert. denied*, 389 U.S. 841 (1967)) (“The decision
 27 whether or not to prosecute a given individual is a discretionary function for
 28 which the United States is immune from liability.”).

1 In addition, the discretionary function exception bars Plaintiff's claims
 2 insofar as they are based on alleged investigative misconduct. "The investigation
 3 of crime involves policy judgments at the core of the executive branch." *Gonzalez*
 4 *v. U.S.*, 814 F.2d 1022, 1032 (9th Cir. 2016). Thus, courts presume actions
 5 connected to criminal investigations are grounded in a legitimate policy rationale.
 6 *Nieves Martinez v. United States*, 997 F.3d 867, 880 (9th Cir. 2021) (citing
 7 *Gonzalez*, 814 F.3d at 1028, 1032). However, the discretionary function exception
 8 "does not apply to law enforcement investigations when a federal employee's
 9 tactics during an investigation had 'no legitimate policy rationale.'" *Id.* at 881 (9th
 10 Cir. 2021) (quoting *Sabow*, 93 F.3d at 1454). The Ninth Circuit has found that
 11 there was a policy rationale for a border control agent's threat that the family of
 12 an individual under investigation could face 15 to 30 years of incarceration, even
 13 though it "may have been negligent and even abusive," because it "was furthering
 14 an investigation meant to reduce the illegal transfer of drugs across the border."

15 Here, the government agents were investigating the scope of a potential
 16 scope of a criminal conspiracy to commit murder, and Plaintiff cannot identify
 17 any specific actions undertaken by the government agents that was improper, so
 18 the discretionary function exception applies. Since Plaintiff's claims are not
 19 facially outside the discretionary function exception, the exception applies to
 20 Plaintiff's claims.

21 a. Leave to Amend

22 The Court will not grant Plaintiff leave to amend. Because Plaintiff's claims are
 23 barred by sovereign immunity, amendment would be futile. *See Daniel v. Nat'l*
 24 *Park Serv.*, 891 F.3d 762, 766 (9th Cir. 2018) (citing *Mitchell*, 463 U.S. 206 at
 25 212) ("a suit dismissed on sovereign immunity grounds cannot be salvaged.").

26 **IV. CONCLUSION**

27 The Court notes that the parties made several arguments and cited to several
 28 cases not discussed above. The Court has reviewed these arguments and cases

1 and determines that they do not warrant discussion as they do not affect the
2 outcome of the issues before the Court.

3 It is therefore ordered that Defendant's Motion to Dismiss (ECF No. 71) is
4 granted.

5 It is further ordered that Plaintiff's Motion to Extend Time (ECF No. 81) is
6 denied as moot.

7 It is further ordered that the Clerk of Court close this case and enter judgment
8 in favor of Defendant.

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10 DATED THIS 29th day of March 2024.

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14 ANNE R. TRAUM
15 UNITED STATES DISTRICT JUDGE
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